

be considered as addressed to the discretion of the Board. Should a protestant desire to proceed further against a collective ratemaking action which is not suspended, or which has been suspended and the suspension vacated, a separate later formal complaint or petition should be filed.

(b) *When filed.* Protests against, and requests for suspension of, collective ratemaking actions will not be considered unless made in writing and filed with the Board at Washington, DC. If the protestant desires action by the Board before the effective date of the collective action, protests and requests for suspension shall reach the Board at least 12 days (except as provided in paragraph (c) of this section) before such effective date. If the protested collective ratemaking action is already in effect, or if the protestant does not desire action before its effective date, protests and requests for suspension can be filed at any time.

(c) *Motor carrier tariff bureau filings.* When motor common carrier tariff bureaus take collective actions subject to the special procedures adopted in Ex Parte No. MC-82, *New Procedures in Motor Carrier Rev. Proc.* 340 I.C.C. 1 (1971), and set forth at 49 CFR part 1139, protests must reach the Board at least 22 days before the effective dates of those actions if protestants desire action by the Board before such effective dates. All statements should be served by express mail or an equivalent expedited delivery service upon any party undertaking to bear the cost. Written request for this expedited service must be made no less than 5 days before the statement is due to be filed with the Board.

(d) *Copies; service.* In connection with proceedings involving proposals subject to the special procedures in Ex Parte No. MC-82, *New Procedures in Motor Carrier Rev. Proc.* 339 I.C.C. 324, and set forth at 49 CFR part 1139, an original and 10 copies of every protest or reply filed under this section should be furnished for the use of the Board. Except as provided for proposals subject to the special procedures in Ex Parte No. MC-82, the original and 10 copies of each protest, or of each reply filed under this section, must be filed with the Board, and one copy simultaneously

must be served upon the publishing carrier or collective ratemaking organization, and upon other persons known by protestant to be interested. These pleadings should be directed to the attention of the Secretary, Surface Transportation Board.

(e) *Reply to protest.* A reply to a protest filed at least 12 days before the effective date of proposed collective action provisions must reach the Board not later than the fourth working day prior to the scheduled effective date of the protested provisions unless otherwise provided. Replies to protests against motor carrier rate bureau proposals subject to Ex Parte No. MC-82 procedures, to be assured of consideration, must reach the Board no later than 14 days before the scheduled effective date of the protested provisions.

#### **§1132.2 Procedures in certain suspension matters.**

(a) A petition for reconsideration may be filed by any interested person within 20 days after the date of service of a Board decision which results in an order for:

(1) Investigation and suspension of collective ratemaking actions, or

(2) Investigation (without suspension) of collective ratemaking actions.

(b) Any interested person may file and serve a reply to any petition for reconsideration permitted under paragraph (a) of this section within 20 days after the filing of such petition with the Board, but if the facts stated in any such petition disclose a need for accelerated action, such action may be taken before expiration of the time allowed for reply. In all other respects, such petitions and replies thereto will be governed by the rules of general applicability of the Rules of Practice.

### **PART 1133—RECOVERY OF DAMAGES**

Sec.

1133.1 Freight bill filing requirement under modified procedure.

1133.2 Statement of claimed damages based on Board findings.

AUTHORITY: 49 U.S.C. 721.

SOURCE: 47 FR 49575, Nov. 1, 1982, unless otherwise noted.

## §1133.1

### §1133.1 Freight bill filing requirement under modified procedure.

If, under modified procedure (for general rules governing modified procedure, see part 1112), an award of damages is sought, complainant should submit the paid freight bills or properly certified copies with its statement when there are not more than 10 shipments; if more than 10 shipments are involved, complainant should retain the documents.

### §1133.2 Statement of claimed damages based on Board findings.

(a) When the Board finds that damages are due, but that the amount cannot be ascertained upon the record before it, the complainant should immediately prepare a statement showing details of the shipments on which damages are claimed, in accordance with the following form:

Claim of \_\_\_\_\_ under decision of the Surface Transportation Board in Docket No. \_\_\_\_\_.

\_\_\_\_\_. Date of shipment.  
\_\_\_\_\_. Date of delivery or tender of delivery.  
\_\_\_\_\_. Date charges were paid.  
\_\_\_\_\_. Car (or vessel) initials.  
\_\_\_\_\_. Car (or voyage) number.  
\_\_\_\_\_. Origin.  
\_\_\_\_\_. Destination.  
\_\_\_\_\_. Route.  
\_\_\_\_\_. Commodity.  
\_\_\_\_\_. Weight.  
\_\_\_\_\_. Rate.  
\_\_\_\_\_. Amount.  
\_\_\_\_\_. Rate.  
\_\_\_\_\_. Amount.  
\_\_\_\_\_. Reparation on basis of Board's decision.

\_\_\_\_\_. Charges paid by.<sup>1</sup>

Claimant hereby certifies that this statement includes claims only on shipments covered by the findings in the docket above described and contains no claim for reparation previously filed with the Board by or on behalf of claimant or, so far as claimant knows, by or on behalf of any person, in any other proceedings, except as follows: (Here indicate any exceptions, and explanation thereof).

\_\_\_\_\_. (Claimant)  
By \_\_\_\_\_. (Practitioner)

<sup>1</sup>Here insert name of person paying charges in the first instance, and state whether as consignor, consignee, or in what other capacity.

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\_\_\_\_\_. (Address)

\_\_\_\_\_. (Date)

Total amount of reparation \$ \_\_\_\_\_. The undersigned hereby certifies that this statement has been checked against the records of this company and found correct.

Date \_\_\_\_\_ Concurred<sup>2</sup> in: \_\_\_\_\_ Company  
\_\_\_\_\_. Company, Defendant Collecting Carrier, Defendant<sup>3</sup>.

By \_\_\_\_\_, Auditor. By \_\_\_\_\_, Auditor.

(b) The statement should not include any shipment not covered by the Board's findings, or any shipment on which complaint was not filed with the Board within the statutory period. The filing of a statement will not stop the running of the statute of limitations as to shipments not covered by complaint or supplemental complaint. If the shipments moved over more than one route, a separate statement should be prepared for each route, and separately numbered, except that shipments as to which the collecting carrier is in each instance the same may be listed in a single statement if grouped according to routes. The statement, together with the paid freight bills on the shipments, or true copies thereof, should then be forwarded to the carrier which collected the charges, for verification and certification as to its accuracy. If the statement is not forwarded immediately to the collecting carrier for certification, a letter request from defendants that forwarding be expedited will be considered to the end that steps be taken to have the statement forwarded immediately. All discrepancies, duplications, or other errors in the statements should be adjusted by the parties and corrected agreed statements submitted to the Board. The certificate must be signed in ink by a general accounting officer of the carrier and should cover all of the information shown in the statement. If the carrier which collected the charges is not a defendant in the case, its certificate must be concurred in by like signature on behalf of a carrier defendant. Statements so prepared and certified shall be filed with the Board whereupon it

<sup>2</sup>For concurring certificate in case collecting carrier is not a defendant.

<sup>3</sup>If not a defendant, strike out the word "defendant."

## Surface Transportation Board, DOT

§1139.1

will consider entry of a decision awarding damages.

[47 FR 49575, Nov. 1, 1982, as amended at 64 FR 53268, Oct. 1, 1999]

### PART 1135—RAILROAD COST RECOVERY PROCEDURES

AUTHORITY: : 5 U.S.C. 553 and 49 U.S.C. 721 and 10708.

#### § 1135.1 Quarterly adjustment.

To enable the Board to publish the rail cost adjustment factor (RCAF) as required by 49 U.S.C. 10708, the Association of American Railroads (AAR) shall calculate and file with the Board by the fifth day of December, March, June and September of each year its forecast for the next calendar quarter of the all-inclusive index of railroad costs and calculate and file the RCAF unadjusted for changes in railroad productivity as prescribed in *Railroad Cost Recovery Procedures*, 1 I.C.C.2d 207 (1984), and any subsequent amendments thereto. In addition, the AAR shall calculate the productivity-adjusted RCAF as prescribed in *Railroad Cost Recovery Procedures*, 5 I.C.C.2d 434 (1989), and any subsequent amendments thereto. The AAR shall submit workpapers detailing its calculations. The Board will review and verify the AAR submissions and make its RCAF publication by the twentieth day of December, March, June and September of each year.

[67 FR 55166, Aug. 28, 2002]

### PART 1139—PROCEDURES IN MOTOR CARRIER REVENUE PROCEEDINGS

#### Subpart A—Common Carriers of General Commodities

Sec.

- 1139.1 Application.
- 1139.2 Traffic study.
- 1139.3 Cost study.
- 1139.4 Revenue need.
- 1139.5 Affiliate data.
- 1139.6 Official notice.
- 1139.7 Service.
- 1139.8 Availability of underlying data.

APPENDIX I TO SUBPART A—REVENUE NEED AND ALLOCATION TO TRAFFIC AT ISSUE

APPENDIX II TO SUBPART A—FINANCIAL RATIOS (TRAFFIC AND COST STUDY CARRIER

#### Subpart B—Intercity Bus Industry

- 1139.20 Application.
- 1139.21 Study carriers.
- 1139.22 Revenue data for study carriers.
- 1139.23 Revenue need.
- 1139.24 Official notice.
- 1139.25 Service.
- 1139.26 Availability of underlying data.

SCHEDULE A TO SUBPART B—CLASS I PARTICIPATING CARRIERS' REVENUE DATA

SCHEDULE B TO SUBPART B—STUDY CARRIERS' REVENUE DATA

SCHEDULE C TO SUBPART B

SCHEDULE D TO SUBPART B

SCHEDULE E TO SUBPART B—STATEMENT OF CHANGES IN FINANCIAL POSITION

SCHEDULE F TO SUBPART B—AFFILIATE REVENUE DATA FOR SERVICES RENDERED

SCHEDULE G TO SUBPART B—SELECTED STATISTICAL DATA

APPENDIX I TO SUBPART B

AUTHORITY: 49 U.S.C. 721, 13703.

#### Subpart A—Common Carriers of General Commodities

SOURCE: 47 FR 49577, Nov. 1, 1982, unless otherwise noted.

#### §1139.1 Application.

(a) Upon the filing by the tariff publishing agencies named hereinafter on behalf of their motor common carrier members, or by such other agencies as the Board may by order otherwise designate, of agency tariff schedules which contain (1) proposed general increases in rates or charges on general freight where such proposal would result in an increase of \$1 million or more in the annual operating revenues on the tariff affected by the proposal, or (2) a proposed general adjustment with the objective of restructuring the rates on a wide range of traffic, involving both increases and reductions in rates and charges, where such proposal would result in a net increase of \$1 million or more in annual operating revenues, the motor common carriers of general freight on whose behalf such schedules are filed shall, concurrently with the filing of those tariff schedules, file and serve, as provided hereinafter, a verified statement presenting and comprising the entire evidential case which is relied upon to support the proposed general increase or rate restructuring. Carriers thus required to submit their evidence when they file their schedules